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Croninger, supra; *Boston & Maine R. v. Hooker*, 233 U. S. 97. As to intrastate shipments the state law is, of course, controlling, and such agreements have been specifically prohibited by the laws of some states. *Chesapeake & O. R. Co. v. Pew*, 109 Va. 288, 64 S. E. 75.

Perhaps a majority of the courts take the view that while the agreed valuation is binding on the shipper where the loss is occasioned by the carrier's negligence, it should not be given effect where the loss is occasioned by the carrier's affirmative wrongdoing. *Adams Exp. Co. v. Berry & Whitmore Co.*, 35 App. D. C. 208, 31 L. R. A. (N. S.) 309. The reasons assigned for this view are that it would be contrary to public policy for the carriers to be able to lessen their liability for conversion. *Central of Ga. R. Co. v. Chicago Portrait Co.*, 122 Ga. 11, 49 S. E. 727; *Georgia, etc., Co. v. Houghart*, 90 Ala. 36, 8 South. 62. It has also been suggested that, since an action for conversion is purely a tort action, it is outside of the contract and not controlled by it. See *Adams Exp. Co. v. Berry & Whitmore Co.*, *supra*. But, as pointed out in the principal case, such holdings make the amount of recovery depend upon the form of the act, refuse to carry out the contractual intent of the parties, and are not justified by any real consideration of public policy.

CONTRACTS—ILLEGAL CONTRACTS—RECOVERY OF MONEY PAID.—A prize contest was conducted by the defendant newspaper association in order to increase its subscription list. The managing agent of the contest, without the defendant's knowledge, induced the plaintiff to pay him a certain sum of money under the agreement that the plaintiff would win the prize. Before the contest had closed, the plaintiff repudiated the agreement and demanded the return of his money from the defendant. This was refused, and the plaintiff brought an action to recover the money. *Held*, the plaintiff can recover. *Greenberg v. Evening Post Ass'n* (Conn.), 99 Atl. 1037.

The general rule is that no action will lie on an executed contract where both parties are equally guilty, the courts applying the maxim *in pari delicto potior est conditio possidentis*. *Sampson v. Shaw*, 101 Mass. 145, 3 Am. Rep. 327. But there is a marked distinction between executed and executory contracts of an illegal nature; and the instant case brings up the point of whether or not there is a *locus penitentiae* in executory contracts so that one *in pari delicto* may recover money advanced for the purpose of carrying out an illegal agreement. The better view would seem to be that there is a *locus penitentiae* in such cases. Thus, where one enters into a simulated race, but repudiates the contract and demands his money back before the race is run, he is entitled to recover. *Falkenberg v. Allen*, 18 Okl. 210, 90 Pac. 415, 10 L. R. A. (N. S.) 494. And money which is wagered illegally and deposited with a stakeholder, who is later notified not to deliver it to the winner, may be recovered from the winner. *Love v. Harvey*, 114 Mass. 80. *A fortiori*, one who wagers his money may recover it from the stakeholder at any time before it is paid out. *Stacy v. Foss*, 19 Me. 335; *Dunn v. Drummond*, 4 Okl. 461, 51 Pac. 656. See *Bernhard v. Taylor*, 23 Or. 416, 31 Pac. 968.

Where the contract is merely *malum prohibitum* and remains executory, it is generally held that the contract may be disaffirmed and money

or property paid out may be recovered, as there is a *locus pœnitentiæ* so long as the contract remains executory. *Eastern, etc., Co. v. Webb, etc., Co.*, 195 Mass. 356, 81 N. E. 251; *Kiewert v. Rindskopf*, 46 Wis. 481, 1 N. W. 163, 32 Am. Rep. 731. See *Monaham v. Monaham*, 77 Vt. 133, 59 Atl. 169, 70 L. R. A. 935. The underlying reason of the rule is to encourage the repudiation and abandonment of illegal agreements. *Falkenberg v. Allen*, *supra*. See, *Ullman v. St. Louis Fair Ass'n*, 167 Mo. 273, 66 S. W. 949, 56 L. R. A. 606. Many other cases may be found showing the application of the rule as it has arisen under various forms of illegal contracts. *Wasserman v. Sloss*, 117 Cal. 425, 49 Pac. 566, 38 L. R. A. 176. See *Hooker v. De Palos*, 28 Ohio St. 251; *Pullman Palace Car Co. v. Central Transportation Co.*, 171 U. S. 138. But this rule has been denied by the New York courts where an action was brought on an illegal contract for money paid out for shares of stock, and it was denied that there was a *locus pœnitentiæ* for the party *in pari delicto*, although the contract had not been fully executed. *Knowlton v. Congress, etc., Spring Co.*, 57 N. Y. 518.

It would seem that the rule in the instant case is sound, both on principle and authority; and that there should be a *locus pœnitentiæ* in such illegal agreements, thus encouraging the abandonment of them.

CRIMINAL CONTEMPT—INFORMATION—VERIFICATION.—The defendant was convicted of criminal contempt upon an affidavit or information specifically charging the alleged offense in positive terms, but verified by the district attorney to the effect that the facts were true and correct upon information and belief. *Held*, the affidavit is sufficient. *Creekmore v. United States* (C. C. A.), 237 Fed. 743. See NOTES, p. 667.

CRIMINAL LAW—FORGERY—TRADING STAMPS.—The defendant was charged with forging certain trading stamps. These stamps did not purport on their face to be the pecuniary obligations of anybody. The information alleged, however, that a certain company was under agreement to redeem such stamps, when properly presented, for a valuable consideration. *Held*, a demurrer to the information will lie, since such stamps are not the subject of forgery. *State v. Sisson, et al.* (Mo.), 192 S. W. 454.

It is well established that any instrument which, if genuine, might be the basis of a legal liability, may be the subject of forgery. CLARK & MARSHALL, CRIMES, § 392. It is sufficient that the instrument appear to possess such legal efficacy, even though it would be void on account of extrinsic circumstances. *United States v. Turner*, 7 Pet. 132; *State v. Wheeler*, 20 Or. 190, 10 L. R. A. 779.

The instrument must, however, possess the legal capacity to defraud. *People v. Tomlinson*, 35 Cal. 503; *Arnold v. Cost*, 3 Gill. & J. (Md.) 219, 22 Am. Dec. 302. See *Terry v. Commonwealth*, 87 Va. 672, 13 S. E. 104. Hence, an instrument which, if genuine, would on its face be void for the purpose intended and upon which, therefore, no one would have a right to rely, cannot be the subject of this crime. *Commonwealth v. Cochran*, 143 Ky. 807, 137 S. W. 521; *Bagley v. State*, 63 Tex. Crim. Rep. 606, 141